

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
NATHANIEL COLEMAN	:	NO. 85-00195-01

MEMORANDUM AND ORDER

Fullam, Sr. J. March , 1999

Many years ago, the defendant Nathaniel Coleman was indicted for conspiracy to murder a federal witness, 18 U.S.C. §241, and for obstructing justice, 18 U.S.C. §1503, stemming from the murder of one Nigel Anderson. A jury trial was conducted before another member of this court, and the defendant was convicted. The trial judge, however, granted a new trial. The government appealed, and the Third Circuit Court of Appeals reversed the new trial order, and reinstated the conviction. United States v. Coleman, 811 F.2d 804 (3d Cir. 1987).

The original trial judge then disqualified himself, and the case was reassigned to my docket. On August 5, 1987, I sentenced the defendant to life imprisonment. The defendant appealed, and the Court of Appeals affirmed the conviction and sentence. U.S. v. Coleman, 862 F.2d 455 (3d Cir. 1988), cert denied, 490 U.S. 1070 (1989). The defendant thereafter sought relief pursuant to 42 U.S.C. §2255; that application was denied on July 25, 1991, and the Court of Appeals affirmed by judgment

order on February 28, 1992.

The defendant thereupon filed a "Petition for a Writ of Plain Error" in which he again collaterally attacked his conviction. I denied that application on October 6, 1993, and the Court of Appeals affirmed by judgment order dated December 13, 1994.

The defendant has now filed a "Motion to Correct Illegal Sentence Pursuant to 1987 Version of Rule 35(a)," and also a motion for my recusal. The gist of both of these applications is that, since I did not preside at petitioner's trial, it was illegal for me to impose sentence; and that I should now recuse and reassign the case to the original trial judge. The applications will be denied as frivolous.

When defendant's conviction and sentence were affirmed, the Court of Appeals was undoubtedly aware of the identity of the sentencing judge, and of the fact that I had not presided at petitioner's trial. The transcript of the sentencing hearing, alone, makes extensive reference to that fact. Since the Court of Appeal's opinion does not discuss the issue now sought to be raised by the petitioner, the issue must be deemed to have been waived, or to have been found meritless. In either case, the issue cannot now be resurrected, fourteen years after trial and eleven years after affirmance. Finally, it is clear that, when necessary, a criminal sentence can properly be imposed by a judge

who did not preside at the trial. The trial judge having recused, it was manifestly necessary to substitute another judge for all remaining proceedings.

The recusal of the trial judge also, obviously, precludes reassignment of the present applications to him for decision. And my alleged lack of familiarity with the trial record (although I did not preside at petitioner's trial, I did preside at the trial of a co-defendant, which involved substantially the same evidence; but that trial did not occur until after petitioner's sentence) does not establish bias or any other valid basis for recusal.

Finally, it bears mention that, although petitioner was sentenced to life imprisonment, the government had sought what it regarded as a more severe sentence (a term of 60 years or so, which, in the government's view, would assure a longer term of actual imprisonment than a life sentence).

The pending applications will be denied.

An Order follows.

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ORDER

AND NOW, this        day of March 1999, IT IS ORDERED:

1. Defendant's "Motion to Correct Illegal Sentence Pursuant to 1987 Version of Rule 35(a)" is DENIED.

2. Petitioner's Motion for Recusal of the sentencing judge is DENIED.

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John P. Fullam, Sr. J.